

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 5854 OF 1987

Munshi Dayashankar, since deceased
through heirs and legal representatives ...Petitioners
V/s.

Smt.Dulari Rambali Yadav
(since deceased) through heirs and
Legal representatives ...Respondents

None present for the Petitioners.

None present for the Respondents.

**CORAM : V.M. KANADE, J.
DATED : AUGUST 27, 2007**

P.C. :-

. None appears for the petitioners and for the respondents. Even on the last three dates on 24.8.2007, 3.8.2007 and 27.7.2007, neither the petitioners nor the respondents were present when the matter was called out. Earlier, the petition was dismissed for want of prosecution on 21.7.89 and restored and thereafter, again it was dismissed on 29.8.98 and it was restored on 3.10.2003. Since the petition is of 1987, matter is not adjourned merely because the petitioner and his counsel are absent.

2. The petitioner is a landlord in respect of open space admeasuring 85' x 32' out of Survey No.85 situated at Pratap Nagar Road, Bhandup, Bombay.

3. The petitioner - the original plaintiff called upon the defendant to hand over the vacant and peaceful possession of the suit premises by notice dated 31.8.70 on her failure to pay rent at the rate of Rs.36/- per month from 1.1.69. He, therefore, filed a suit against the respondent-defendant for injunction and possession of the premises. The respondent filed her written statement and it is alleged that the Small Causes Court did not have jurisdiction to try the said suit since the suit premises was agricultural land and thereafter, non-agricultural use of the said land was granted with retrospective effect from 1.8.65. The trial Court passed the decree for possession in favour of the petitioner-original plaintiff. Against the said order, the petitioner preferred an appeal before the learned Division Bench of the Small Causes Court. The Division Bench of the Small Causes Court allowed the appeal and set aside the judgment of the trial Court and held that there is no relation of landlord and tenant between the plaintiff and defendant.

4. I have perused the impugned order. The lower

Appellate Court after taking into consideration the oral and documentary evidence on record recorded the aforesaid findings. In my view, there is no infirmity in the order passed by the learned appellate Court. The judgment and order passed by the Division Bench of the Small Causes Court is confirmed.

5. Rule is discharged. Petition is dismissed. Interim relief, if any, to be vacated.

(V.M. KANADE, J.)